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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Petition For Reconsideration
And Request For Expedited
Action

By TKR Cable Company

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MM Docket 92-266

COMMENTS OF THE CABLE TELECOMMUNICATIONS
ASSOCIATION

Cable Telecommunications
Association.
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2. TKR has asked the Commission to determine that local franchising authorities may not toll the effectiveness of external cost pass-throughs after 30 days written notice, and further that cable operators be permitted to recover the

cumulative amount of all external costs incurred, but not passed through, in a prorated manner similar to that permitted for FCC regulatory fees. We address these issues separately.

External Pass-throughs Should Become Effective Thirty Days After Notice

3. TKR notes that operation of the Commission's rules permit a delay of many months before rate increases are approved by local franchising authorities. Moreover, TKR explains, the Commission's rules seem not to provide any method of recovering revenues lost during this process. While this situation may be appropriate (if some loss recovery mechanism is provided) in the case of a complicated rate increase filing for which the local franchising is unable to make an assessment and for which additional information is needed from the cable operator, it is particularly unfair -- and surely unintended by the Commission, in the case of external cost pass-throughs determined pursuant to the Commission's own imposed formulas.

4. CATA supports TKR's arguments. We emphasize here that there is no attempt to foreclose a franchising authority from whatever deliberation is necessary to review a complicated rate justification. But in the case of external pass-throughs, all that is needed is to determine that several lines of the FCC Form

1210 have been properly filled in. The franchising authority will already have examined the basis of the system's charges -- in the Form 1200. It need only assure itself that an already approved number is being multiplied correctly by a number determined by the FCC, or that the same number is being added to by an amount specifically authorized by the FCC. There is little room for judgement, and certainly no excuse to permit the franchising authority to extend its normal 30-day evaluation period by an additional three months.

5. If the Commission believes that it must change its rules in order to accommodate TKR's concerns, then CATA certainly supports such a change. We believe, however, that a rule change is unnecessary; that in its May 3, 1993 Report and Order and Further Notice of Proposed Rulemaking in this docket, the Commission has satisfactorily resolved the issue. In paragraph 133 the Commission explains:

As discussed below, certain price changes beyond an operator's control can automatically be passed through to subscribers in addition to the reasonable rate. However, a franchising authority, in order to regulate rates effectively, must be apprised of such automatic adjustments in order to ensure that they are accurately calculated and justified. Consequently, we will require that a cable operator notify franchising authorities 30 days in advance of a rate increase based on automatic adjustment items. Because such exogenous costs are presumed reasonable, review of these adjustments should not create an undue delay for the operator and the franchising authority must pass on them within 30 days. [emphasis supplied]

The Commission goes on to state in footnote 355:

In addition, even if a proposed increase exceeds the presumptively reasonable level, we will require franchising authorities to act on the portion of the increase that qualifies as an automatic adjustment within 30 days. If the franchising authority does not act upon a request for such an adjustment within 30 days, it will go into effect automatically. [emphasis supplied]

It appears, therefore, that the Commission has already spoken to the issue of the time needed to approve automatic rate adjustments. While the general rule is that a franchising authority may toll its 30 day approval period, clearly the Commission has considered the special case of an automatic external cost adjustment where additional time is unnecessary. Were the Commission to maintain that in the case of external cost adjustments, the franchising authority was entitled to a full 120 day review, then the language cited above would lose all independent meaning. We therefore urge the Commission to deal with this portion of the TKR petition by noting simply that the rules already provide that automatic adjustments based on Commission formulae become effective in 30 days.

6. We emphasize that our reading of the rules creates no disadvantage to any party, most importantly the subscribing public. If, after 30 days, a franchising authority determines that there has been some error in the computation of a rate increase, it can always order a refund. Thus, subscribers are

protected, and, in the meantime, cable operators are not foreclosed from revenues to which the Commission itself, has determined they are entitled.

7. In its Fourth Order on Reconsideration in this docket, the Commission, on its own motion, determined that in the case of rate increases to reflect franchise fee increases and regulatory user fee payments, approval of the local franchising authority would not be required at all. In the case of franchise fee increases, the Commission explained that since the increased fee is imposed by the franchising authority itself, it is presumed to know its amount and impact upon subscribers. In the case of regulatory user fees, no explanation was given. Presumably, however, the basis of the decision was that because the FCC had imposed a formula for determining the amount of a pass-through, as well as the timing of a pass-through, there was nothing to be gained by waiting an additional 90 days for local scrutiny and approval before increased rates can go into effect. In other words, there is no room for the exercise of discretion.

8. Similarly, there is no room for discretion for any of the permitted pass-throughs. State and local taxes are determined pursuant to state and local law (and in any event there is certainly no incentive to pay more taxes than one must); the costs of complying with franchise requirements are known to the franchising authority, and, as with the case of franchise fee

increases, one may presume the franchising authority is aware of the impact of these costs; retransmission consent fees are memorialized in writing and there can be little dispute on the part of the franchising authority; and additional charges for the addition of channels is a matter the Commission has now spoken to clearly, again leaving no discretion on the part of the franchising authority.

9. The Commission could well have taken the same approach to all external pass-throughs -- that prior approval was not needed. Indeed the Commission should take this approach and, quoting the above-cited language, simply announce that it has already spoken to the problem. It appears that in its decision in the Fourth Order on Reconsideration, the Commission was re-iterating what it had said before -- External pass-throughs become effective automatically 30 days after notice to the local franchising authority. By treating only two cases of the general class of external pass-throughs, it seems that the situation has become more, not less, confused.

10. CATA would go further than TKR. If, indeed, franchise authority review of external cost pass-throughs is truly a ministerial function, then, even during the initial 30 day notice period, franchise authorities should not be permitted to deny a proposed increase. If the cable operator has miscalculated, then refund is the appropriate mechanism to protect subscribers, not

delay. Since the entitlement to an external pass-through is determined solely by the Commission, it makes little sense to permit a franchise authority to deny it, even in theory. Indeed, unless the Commission clarifies its policies, franchising authorities will be able to "game" the process merely by denying a pass-through already determined to be appropriate by the Commission. The operator would have to appeal the franchising authority's decision to the Commission and then wait, potentially years, for a formal decision. Meanwhile there would be no way to recover lost revenue.

Permit Recovery of Pass-throughs on a Pro-rated Basis

11. Under the present regulatory scheme, some rate adjustments may occur at various intervals and others must occur at specific times. Increases for additional program services must take place at the beginning of a quarter if the operator is to recover these costs on a timely basis and not lose revenue. Inflation adjustments must take place annually but within a specified time frame. The recovery of regulatory fees is to be pro-rated according to a formula over a twelve month period, starting and ending at specific times. All of this is unnecessarily complicated and may in any given instance have little relationship to how and when a cable operator deems it appropriate to adjust its rates. TKR's request is simply that

cable operators be able to aggregate external pass-throughs over the course of a year and then issue a rate increase that pro-rates these accumulated costs over the next year. This is just what the Commission elected in the case of regulatory user fee pass-throughs.

12. TKR's proposal is sensible. No useful public purpose is served by a set of regulations that result in multiple rate increases each year. Such a system will create confusion and mis-perception on the part of subscribers, extra work for cable operators and, ultimately, an increased burden on the Commission itself as each increase inevitably spawns a new flurry of complaints. If the Commission believes that operators are entitled to certain increased revenues then it should not at the same time create disincentives to collecting them. The Commission should permit operators to aggregate pass-throughs, reduce the number of rate increases and collect the revenues that the law specifies.

13. CATA supports TKR's petition. It is important that the Commission, having labored to finally resolve many of the outstanding issues concerning external costs, not permit the process to be gamed by local franchising authorities who have a political incentive to delay the imposition of higher rates. It is simply not the function of local government to put off rate adjustments that the Commission has determined cable operators

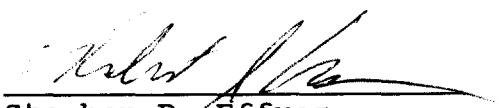
are entitled to receive. The refund mechanism is already in place to protect cable subscribers in the event an operator errs in determining the amount of a pass-through.

14. We also agree with TKR that it makes little sense to dictate a complicated structure for when external costs may be pass-through. It would certainly be less confusing to subscribers if costs could be aggregated and then imposed on a pro-rated basis. At least cable operators should be given such an option. In its desire to reduce the appearance of larger rate increases, the Commission has instead created a system where lesser increases must occur frequently. CATA respectfully maintains that this is not the business of government.

respectfully submitted,

THE CABLE TELECOMMUNICATIONS
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